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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No.376 of 2005

Mohammed Naeem Khan

Versus

Mahendra Singh Khanuja and two others

JUDGMENT

Post for 13-06-2007

Sd/-
Dilip Raosaheb Deshmukh
Judge

(39)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No. 376 of 2005

Appellant (Defendant)		Mohammed Naeem Khan, aged about 29 years, son of Shri Nabi Baksh @ Chhutu Khan, resident of Kali Ward, Kawardha, District Kabirdham.
		Versus
Respondents Plaintiff	: 1.	Mahendra Singh Khanuja, aged about 42 years, son of Late Surjeet Singh Khanuja, resident of Guru Govind Singh Chowk, Main Road, Kawardha, District Kabirdham.
Defendant No.2	: 2.	The Collector, Kawardha, District Kabirdham.
Defendant No.3	: 3.	The Executive Engineer, Public Works Department, (National Highway No.12) Sub-Division Kawardha, District Kabirdham.

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE 1908

Present:
Shri Ajit Singh, counsel for the appellant/defendant.
Shri Rajeev Shrivastava, counsel for respondent No.1

ORDER
(Delivered on this 13th day of ~~May~~ June, 2007)

The appellant/defendant is aggrieved by the judgment and decree passed in Civil Appeal No. 16-A of 2004 on 12.07.2005 by District Judge, Kabirdham (Kawardha) whereby the judgment and decree passed by the 2nd Civil Judge, Class-I, Kawardha in Civil Suit No. 44-A of 2003 dismissing the suit for eviction was revered.

2. It is not disputed that Jyoti Chourasia was the owner of plot No.12 area 193 square meters i.e. 2076 sq. ft. (hereinafter referred to as the 'land'), which was sold by her to the respondent/plaintiff – Mahendra Singh Khanuja by a registered sale deed dated 15.05.2001. On the land thus sold, there was an old tin shed (hereinafter referred to as the 'shed') made of bricks in which the appellant/defendant was the tenant of Smt. Jyoti Chourasia on rent of Rs.300/- per month. The appellant/defendant was running an automobile tyre puncture shop in the shed. The appellant/defendant used to pay rent to Parameshwar Prasad Choubey every month. It is also not disputed that in the registered sale deed dated 15.05.2001, it was not mentioned that along with the land the shed has also been sold. Admittedly, the respondent/plaintiff served legal notice on 22.11.2002 of attornment of tenancy to the appellant/defendant vide Ex.P.7 to which the appellant/defendant had replied vide Ex.P.10. It is also admitted that the appellant/defendant had, at no point of time, paid any rent to the respondent/plaintiff.

3. The respondent/plaintiff instituted Civil Suit for eviction of the tenant on the ground of bona fide requirement for construction of a commercial complex on the land as also on the ground that the shed had become old and dilapidated and was unsafe for human life. Arrears of rent and *mesne* profits were also claimed in the suit. The trial Court dismissed the suit for eviction solely on the ground that the plaintiff had failed to prove that he was the landlord and owner of the shed since in the registered sale deed dated 15.05.2001, it was not mentioned that the shed was also sold along with the land.

4. Being aggrieved, the respondent/plaintiff preferred Civil Appeal No. 16-A of 2004. The lower appellate Court, on appreciation of evidence oral as well as documentary, held that Jyoti Chourasia intended to sell the shed along with the land to Mahendra Singh Khanuja and that rent of the shed should be paid by the tenant to Mahendra Singh Khanuja. It also held that the plaintiff required the shed bona fide for construction of a commercial complex on the land. It was also held that denial of the title of the landlord by the tenant entitled the plaintiff to evict the tenant. On these premises, the appeal was allowed.

5. Learned counsel for the appellant/defendant submitted at the very outset that he would assail the impugned judgment only on the ground that the respondent/plaintiff had failed to prove that the relationship of landlord and tenant existed between the appellant/defendant and the respondent No.1/plaintiff because the sale deed dated 15.05.2001 did not show that the shed was also included in the transfer of land to Mahendra Singh Khanuna. No other point was urged. On the other hand, learned counsel for respondent No.1/plaintiff while arguing in support of the impugned judgment and decree contended that the facts relating to purchase of the shed appurtenant to the land were specifically pleaded in the plaint paragraph 2, which was not specifically denied by the appellant/defendant No.1 in the written statement paragraph 2. Placing reliance on ***Jahuri Sah and others v. Dwarika Prasad Jhunjhunwala and others*** **AIR 1967 SC 109,** it was urged that in the absence of specific denial, the above fact should be taken to be admitted by the defendant.

6. The sole substantial question of law that arises for determination in this appeal is as under:

> "Whether the first Appellate Court was right in holding that the respondent-plaintiff was the landlord of the appellant-defendant in the suit accommodation?"

7. Having heard the rival contentions, I have perused the record. The pleadings relating to purchase of the shed appurtenant to the land by the respondent No.1/plaintiff are contained in paragraph 2 of the plaint. It has been specifically pleaded that the respondent No.1/plaintiff had purchased the land along with the shed appurtenant thereto on 15.05.2001. However, in the written statement the defendant No.1 in paragraph 2 did not either generally or specifically deny this fact. Under Order VIII Rule 5 of C.P.C., every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleadings of the defendant shall be taken to be admitted by the defendant.

8. Section 8 of the Transfer of Property is as under:

> 8. Operation of transfer.---Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.
>
> Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth ;
>
> and where the property is machinery attached to the earth, the moveable parts thereof;
>
> and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors windows, and all other things, provided for permanent use therewith;
>
> and, where the property is a debt or other actionable claim ; the securities therefore (except where

> they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer ;
>
> and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

Section 8 of the Transfer of Property Act thus provides that where the property is land, the legal incidents shall include the easements annexed thereto, the rents and profits thereof accruing after the transfer and all things attached to the earth unless a different intention is expressed or necessarily implied by the transferor.

9. Thus it needs to be examined whether Jyoti Chourasia expressed any intention that while transferring the land, ownership of the shed and the right to recover rent thereof was also transferred to Mahendra Singh Khanuja. It is true that the registered sale deed dated 15.05.2001 did not mention that the shed was also included in the transfer of land. However, there is overwhelming evidence on record to show that at the time of transfer, Jyoti Chourasia had expressed a clear intention of transferring the ownership of the shed also to Mahendra Singh Khanuja and had asked the appellant/defendant to pay rent to Mahendra Singh Khanuja. Parameshwar Prasad Choubey is the person to whom admittedly the appellant/defendant used to pay rent while Jyoti Chourasia was the land owner. His testimony shows that he was authorized by Jyoti Chourasia to collect rent of the shed. He admitted in cross-examination that after the sale, Jyoti Chourasia had instructed her not to recover rent of the shed from the tenant. It is also pertinent to note that there is absolutely no material on record whatsoever to show that the appellant/defendant had

continued paying rent to Jyoti Chourasia through Parameshwar Prasad Choubey even after the sale. Parameshwar Prasad Choubey stated that the shed was also sold along with the land by Jyoti Chourasia to Mahendra Singh Khanuja. This testimony is wholly corroborated by Prafulla Shrivastava, a witness to the sale deed dated 15.05.2001. Mohammed Rauf P.W.2 stated that the appellant/defendant was inducted as a tenant in the shed at his behest by Jyoti Chourasia and at the time of sale, Jyoti Chourasia had called him with the appellant/defendant and told them that henceforth the appellant/defendant should pay rent to Mahendra Singh Khanuja. The appellant/defendant admitted receipt of notice from Mahendra Singh Khanuja vide Ex.P.7 in which the fact of purchase of shed by Mahendra Singh Khanuja from Jyoti Chourasia and the attornment of tenancy was mentioned. The fact that the appellant/defendant discontinued paying rent to Jyoti Chourasia or to her agent Parameshwar Prasad Choubey is also sufficient to draw an inference that the appellant/defendant knew that there was an attornment of tenancy and he was required to pay rent to Mahendra Singh Khanuja who had purchased the land on which the shed stood.

10. The order dated 21.06.2001 passed by Nazul Officer, Kawardha Ex.P.2 also shows that after due enquiry the land was mutated in the name of Jyoti Chourasia. The report of Revenue Inspector Ex.D.1 also clearly mentions that the appellant/defendant was in possession of the land which was sold by Jyoti Chourasia to Mahendra Singh Khanuja. In this manner, there is sufficient evidence on record to show that while selling the land to Mahendra Singh Khanuja, Jyoti Chourasia intended to transfer the shed which stood on the land. In this manner, requirement of

Section 8 of the Transfer of Property Act is satisfied and it is proved that by transferring the land through a registered sale deed on 15.05.2001 Jyoti Chourasia had transferred all interests in the land which she was capable of passing to the transferee along with the ownership of the shed and the right to recover rent of the shed. Thus, Mahendra Singh Khanuja acquired title over the shed by virtue of sale deed dated 15.05.2001 and had the legal right to recover rent from the appellant/defendant who became his tenant after the sale by Jyoti Chourasia. For denying the title of the landlord, for not paying rent to the respondent No.1/plaintiff as also on the ground of bona fide requirement of the landlord for construction of a commercial complex, the first appellate Court was wholly justified in reversing the judgment and decree passed by the trial Court and granting a decree for eviction in favour of the respondent No.1/plaintiff.

11. Substantial question of law is thus answered in the affirmative against the appellant/defendant and in favour of the respondent No.1/plaintiff

12. The appeal being devoid of any merit is dismissed. No order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge